**9.23 Copyright – Infringement – Software Compatibility**

In alleged copyright infringement for software, some parts of the software are required because of external factors. These external factors include:

 the need for the computer program to perform certain functions in a specific computing environment;

 the mechanical specifications of the computer on which a program is intended to run; and

 compatibility requirements of other programs that the program is designed to perform in conjunction with.

So if you find that [name of defendant] has copied a portion of [name of plaintiff]’s software, but that [name of defendant] used those elements because of external factors such as compatibility, the external considerations may mean there’s no infringement.

**Special Interrogatories to the Jury**

**Do you find from a preponderance of the evidence:**

 That [name of defendant] copied any portion of [name of plaintiff]’s copyrighted software?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 [If you answer “No,” you don’t need to answer the following question.]

 That [name of defendant]’s use of elements of [name of plaintiff]’s copyrighted software is a result of external factors such as the requirements of the specific computing environment, technical specifications, or compatibility?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_